

# King's Seal

“Rights to occupy and enjoy  
their land, for always”

King's Letters Patent - 19th Feb 1836

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A **STUDY GUIDE** BY ROGER STITSON



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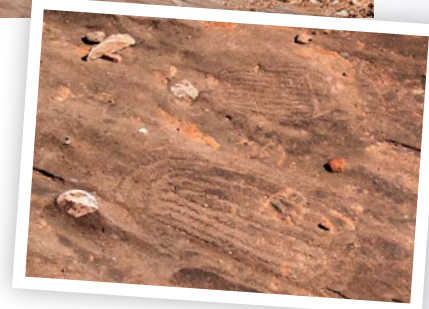
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#### CURRICULUM LINKS:

THIS STUDY GUIDE IS MAINLY AIMED AT MID TO SENIOR SECONDARY SCHOOL LEVELS, WITH RELEVANCE TO ENGLISH, AUSTRALIAN HISTORY, ABORIGINAL STUDIES, FILM AND MEDIA STUDIES, LEGAL STUDIES, POLITICS AND CIVICS.



## Synopsis

In the circle of life - birth, survival and death - Aboriginal people have a network of sites and tracks, embedded in the land, that connect them to all things and enable them to practice their laws, traditions and beliefs.

Colonisation in Australia, denied Aboriginal people access to their land, breaking the life cycle for Aboriginal people.

The Free-Settler Colony of South Australia was going to be different.

King William IV recognised the continued rights to land for Aboriginal people in South Australia's founding document, the Letters Patent, in February 1836. The first ever Aboriginal rights granted in Australia's colonial history. Rights to the land, to occupy and enjoy their land for always, enshrined in law by the King's seal.

What actually occurred in South Australia after colonisation in 1836 was treason. The King's Letters Patent was disobeyed and Aboriginal rights that were granted, to occupy and enjoy their land, were denied.

## Background setting

Carry out the following background activities on the historical terminology, purpose and relevance of the regal 'Seal' and 'Letters Patent', the history of the formation of the colony of South Australia, and the life of the British monarch associated with the colony's beginnings, King William IV.

- Carry out relevant research then discuss in class the historical use, extending back many centuries, of wax as a 'seal' for regal, governmental, legal, ecclesiastical, business and other kinds of official documents and letters. In what way did the wax act as a seal, and for what purpose? What may have been displayed on the surface of the applied wax, and why? By which means were these details applied to the surface of the wax? What might have been the significance and the

ramifications of a broken seal?

As well, explain what is meant by a 'Seal Pendant', and how this was intended to function differently from a more standard, or typical, seal. Note the relevance of the word, 'pendant', and what it means. From observing the documentary program explain whether King William IV's Letters Patent of 1836 contains a standard or a pendant seal. You may wish to draw, colour and label some historical and more recent examples of documentation containing both types of seals. (For more information on this general topic see 'King's Seal' in website references.)

- Discuss in class what is meant by the term, 'Letters Patent'. Where did this term originate from, and why is it always referred to in the





BOBBY BROWN

plural, as 'letters', never 'letter'? That is, you should be aware that 'Letters Patent' is an archaic term, and is not associated to the contemporary usage of the word, 'letter' that we know today – such as a letter in an envelope delivered through the mail service.) Find out the original Latin terminology of 'letters patent', and what it literally means when translated into English. (For more detail, see 'Letters Patent' in website references'.)

- Carry out some research then write your own short account of the reasons behind the formation of the British-governed colony of South Australia in the 1830s. In what ways was the colonisation of South Australia intended to be different from that of New South Wales, Tasmania and Victoria? (See 'Early colonisation of South Australia' in website references. Note also that there are more specific questions about the colonisation of South Australia below, in the section titled, 'Letters Patent of 1836'.)
- Research and write a short account of the life and monarchy of King William IV of England. Ensure you also reference to his place and role in Australian history. (See 'William IV' in website references.
- From what you have found out about the general history of the regal seal and the letters patent, plan and write a short fiction story in which the king's seal is an important plot element. You may either relate this plot element to the events depicted during the documentary – past or present – or tell a completely different story that may, or may not, be set in a bygone historical era and place. It may be a drama, a romance, an historical thriller, or even an outdoors colonial action tale. Choose your genre.



PATRICK T BYRT



JEFFREY NEWCHURCH



PREMIER JAY WEATHERILL



OWEN KARPANY



LYNETTE CROCKER



STEPHEN GADLABARTI GOLDSMITH

## The participants

Carry out the following activities on the central participants in *King's Seal*.

- Write a short account of the importance of the following participants in our understanding and appreciation of the main issues and themes arising from *King's Seal*.
  - Stephen Gadlabarti Goldsmith
  - Owen Karpany and Daniel Karpany
  - Jeffrey Newchurch and Lynette Crocker
  - South Australia's Aboriginal Affairs Minister Grace Portolesi
  - South Australia's Premier Jay Weatherill
  - Tom Gara and Dr Jeff Nicholas
- A major historical participant from the 19<sup>th</sup> century, referred to during the program, is James Hurtle Fisher. From the film and from further research if necessary, explain his role as it relates to the Letters Patent of 1836, the opening up

of land to white settlers in South Australia, and the consequent effect on the Aboriginal population throughout the region. Why, for example, does Tom Gara refer to Fisher as 'the villain of the piece'? Comment on the terminology used by Gara, here, and the issue of historical objectivity. You may also wish to discuss the wider problem of 'reading' and viewing and commenting upon the past through the prism of contemporary attitudes and perspectives. (For more about Fisher, see 'James Fisher' in website references.)

- From the documentary explain the distinction South Australian Premier Weatherill draws between the attitudes and knowledge of European settlers in the 19<sup>th</sup> century, and contemporary non-Aboriginal Australians, towards Aboriginal people. Discuss any possible implications for the contemporary Aboriginal people in South Australia of Weatherill's comments.





## Letters Patent of 1836

Carry out the following activities about the Letters Patent of 1836 to establish the British province of South Australia. (See 'Letters Patent to establish South Australia' in website references.) Note that general questions about what a Letters Patent is, may be found above in the section titled 'Background setting'.

- First, define what you believe are *King's Seal's* basic contentions and arguments, and the evidence presented to support those opinions. (See more on the filmmakers' approach to the documentary's construction in the Media Studies section.)
- As the original hand-written Letters Patent of 1836 is difficult to read, you should locate a printed version, then make your own copy of it for further reference. See, for example, the first-listed website under the heading, 'Letters Patent to establish South Australia'.
- In your own words, and in modern English, write your own version of the Letters Patent. In your rewritten attempt you may insert modern sentence punctuation and paragraphing!
- Note the latitude and longitude markers stated in the Letters Patent as the boundaries for the new colony. Why were these particular boundaries chosen? Compare them to a modern-day map of South Australia. Comment on whether these boundaries have changed since 1836, and if so, why?
- Comment on the belief, assumption or attitude stated in the Letters Patent about the condition of the land to be occupied under British colonialism.
- The previous discussion raises a central question about historical conceptions of land ownership, documented title, and land use, and the differences between races and cultures towards those aspects of daily existence. Discuss the differences in understanding of land 'ownership' that existed at the time of colonialism between the cultures and the political-legal entities of the western world (including Great Britain),

and the Aboriginal and Torres Straitian groupings that existed throughout Australia. How might these differences have affected colonialist attitudes to the Letters Patent of 1836 – assuming those London businessmen and the new settlers to South Australia actually knew and understood the contents of that document?

You might also wish to discuss the general prevailing attitudes and knowledge – or total ignorance – towards the Aborigines of those sailing for the new colony. Discuss the possibility of fear of the unknown, fear of the 'other', as an element of colonial acquisition and defence of land.

- Carry out further research then write a short history of not only how the Letters Patent of 1836 came to be written, but how it was





drafted (or perhaps redrafted) and worded. Who was involved in this endeavour, and what were their aims and motives?

- The reference to Aboriginal people in the Letters Patent states :  
Provided Always that nothing in those our Letters Patent contained shall affect or be construed to affect the rights of any Aboriginal Natives of the said Province to the actual occupation or enjoyment in their own Persons or in the Persons of their Descendants of any Lands therein now actually occupied or enjoyed by such Natives. After carefully examining all the wording of the Letters Patent including the above reference to Aboriginal people, discuss what you think the decree is stating about all 'Aboriginal Natives' who, in the year 1836, were currently living within the latitude and longitude boundaries described. What do you think the decree is proclaiming about the 'Descendants' of those 'Natives'? Explain how and why the references to Aboriginal people were included or inserted into the document. What were the full intentions of those who included the references about Aboriginal Australians into the document? Were these

references, for example, intended from the beginning, deliberately, to prevent Aborigines from being adversely affected by colonial land sales, acquisition and usage?

- Following from the previous questions, a topic for discussion is whether the contents and the meaning of the Letters Patent, relating to Aborigines, were widely known and understood or not, from 1836 and onward, throughout the succeeding decades of South Australian settlement. Were the colonial commissioners in charge of selling the land acting in deliberate defiance of the Letters Patent, or in ignorance of it? The film has a specific point of view, but were the colonial commissioners committing treason against the King's decree?
- The Letters Patent of 1836 came into effect as a result of a British Act of Parliament called the South Australia Act, or Foundation Act, in 1834. However, the Act of 1834 was repealed in 1842, and replaced by a new one titled, An Act to Provide for the Better Government of South Australia. (For the full transcript of the Act,

see 'Second South Australia Act, 1842' in website references.) Carry out research then discuss the reasons as to why the colony of South Australia failed to operate successfully under the Act of 1834. Also examine the wording of the 1842 Act to see if it makes further comment on the status of South Australia's Aboriginal people and their ownership and use of land.

- Following from the previous activity, an important and relevant question, arising from the repeal of the 1834 Act, is whether this has, or has not, invalidated the wording of the Letters Patent of 1836, or at the least confused the entire issue, with a consequent effect on Aboriginal people. Carry out some research on this matter, and discuss in class what you think the legal, ethical and moral situation is, today, regarding the status of the Letters Patent as it applies to Aboriginal land use and native title in South Australia. (For further research see, in particular, the final two references listed under 'Letters Patent to establish South Australia' in website references. Also note questions in





the Media Studies section, below, about the filmmakers' approach to their discussion on the Letters Patent, and the consequent rights of Aborigines in South Australia.)

- Discuss the range of ramifications and consequences for government, business and the entire population of South Australia and perhaps the nation – Aboriginal and non-Aboriginal – were the terms, authority and validity of the Letters Patent of 1836 to be fully recognised in law today. In what ways, for example, might the issues of land tenure and ownership be affected?



## Test case: Native title rights and the Letters Patent

Carry out the following activities about Owen and Daniel Karpany's legal battles with the South Australian government to have the charges against them rescinded. (See 'Owen Karpany legal cases' in website references.)

- First, from the program and elsewhere if required, explain what Owen and Daniel Karpany were

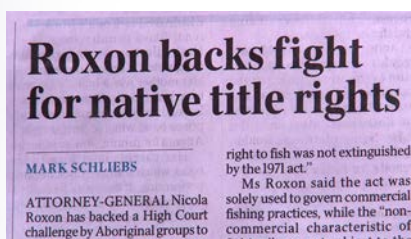
charged with unlawfully doing, under the South Australian Fisheries Act, on the Yorke Peninsula. Discuss in class why the charge was not upheld later in a magistrate's court when the Karpany's appealed against it.

- Explain why the South Australian government won its case against the Karpanys when the government, in its turn, appealed to the Supreme Court against the magistrate's judgement. What did the Supreme Court judgement say about the Native Title Act in the argument that the Act had precedence over the Fisheries Act – and why?
- We are informed, in the sequence in which Owen Karpany

is interviewed on-camera outside the Supreme Court building, that the Letters Patent argument was 'ignored' during the court hearing. The film's voice-over narrator, Stephen Goldsmith, then asks, 'So why wasn't the Letters Patent argument, which is enshrined in the law, used in the Supreme Court appeal. Was it incompetence or a conspiracy?'

First, you should ascertain and verify whether the 1836 Letters Patent is, indeed, 'enshrined in the law' of South Australia. (See class activities related to this question, in the section above titled, 'Letters Patent of 1836'). Second, discuss whether the film explores and





answers the question posed by the narrator: Was the decision in court to ignore the Letters Patent argument due to 'incompetence' or a 'conspiracy'?

- Later, at the Preliminary Hearing, prior to Owen and Daniel Karpanty's full High Court appeal against the Supreme Court judgement, Owen explains that the High Court will not admit the Letters Patent as evidence that they have not broken any fisheries laws. Why won't the High Court admit this important evidence? What alternative legal argument, therefore, does Owen say they will have to pursue in court if they are to win their case? What does Owen suggest are the larger, and hidden reasons, behind the refusal to allow the Letters Patent to be used in court? In what way is a High Court judgement, one way or the other, going to affect what Owen refers to as a 'multi-billion dollar industry'?
- There is a sequence later in the documentary where Owen Karpanty is shown on-camera reading a newspaper report headed, 'Roxon backs fight for native title rights'. What position and authority did Nicola Roxon hold at that time? Explain the importance of her involvement, and the wider



significance of this news report to the Karpantys' chances of winning their appeal case in the High Court.

- Describe the eventual findings of the High Court in judging the Karpanty case, and comment on the wider significance of the findings for Aboriginal people in South Australia, in terms of Native Title rights. Also discuss whether the results of the case are relevant to the arguments concerning the acceptance of the terms written into the 1836 Letters Patent, or whether more needs to be done in this legal and constitutional battlefield.
- Outside the High Court building in Canberra, after the judgement, Owen Karpanty says, 'The little man can win... Fear will prevent you from doing anything. If you do not fear anything, you've got nothing to fear'. Comment on what Owen

means by the 'little man', and whether it applies, historically and individually, to himself, Daniel, their supporters and their wider community. Why do you think Owen referred to the debilitating and powerful sensation and instinct of fear?

- Drawing further from Owen's comments about fear and the paralysis it can bring, plan and write a short fiction story in any way you think best about 'Fear and the Little Man (or Woman)'.
- The South Australian government spent a reported \$400,000. in lawyer fees on the case against Owen and Daniel - for taking 24 undersize abalone to feed their family. Why do you think the state government did this?
- Plan and write two newspaper items about the Karpanty case, its causes, history, judgement and significance. One should be written as a report for a newspaper aimed at Aboriginal Australians, and the other should be an editorial for a daily state newspaper aimed at a more general reading audience. Consider carefully the content and style of approach of the two items, and the use of headlines. Use desktop publishing software to format and present your work in newspaper style. Your news report may also require photos and captions.





## Examples of broken faith

Carry out the following activities about historical and contemporary examples of the ways in which Aboriginal people of South Australia argue that the terms of the Letters Patent of 1836 have been broken. (Note that there are further class activity discussions on the presentation of these examples and arguments in the Media Studies section.)

- First, from the documentary, summarise and comment briefly on the arguments presented by the filmmakers on each of the following situations or historical events presented throughout the film. Note that the following list is presented in an approximate, chronological order, as though placed on a timeline, from the time of South Australian colonisation onwards.

- Mass selling of land acreage to private investors and potential settlers from 1836 onwards.
- Nineteenth century colonial shooting of Aboriginal prisoners at the Port Arthur prison, Yorke Peninsula,
- Condition of rivers and water holes, including the contemporary state of the Torrens River in Adelaide,
- Nuclear testing by Great Britain at Maralinga and Emu Field, 1950s,
- Contemporary fenced-off land in the mid-north of South Australia,
- Contemporary construction building sites of Adelaide Oval and Adelaide hospital,
- Contemporary construction of Seaford railway extension line.

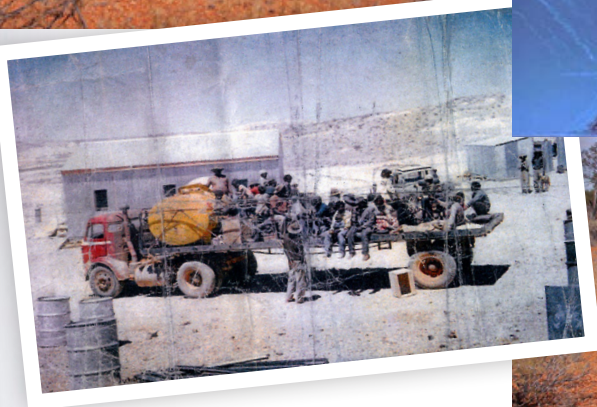
- Carry out some research on early

colonial South Australia (or confine your research to the Adelaide district only), then write a short account of the way the sell-off of land proceeded, who mainly benefited from it, and who did not, and how the land was used and altered from its previous, natural state.

- Comment on what has happened to the rivers and water holes referred to by the on-camera narrator, Stephen Goldsmith, and the reasons behind these events. In the same sequence of the program, Stephen also draws attention to the construction of the new Adelaide Oval and the hospital. Why does he refer to the need for 'cultural monitors'? What work might the monitors carry out on these building sites, and how might it impact on the planning, development and construction of the sites?

Discuss the relative merits and advisability of government, private industry and representatives of Aboriginal heritage being involved from start to finish on all large state projects such as those presented in the program. Find out whether such discussion and advisory





bodies exist in your own state or territory, how they operate, the extent of their powers, and their effectiveness in arriving at solutions and compromises that will satisfy all parties.

- Carry out research to verify the historical authenticity of the events on the Yorke Peninsula in the 19<sup>th</sup> century, whereby Aborigines in the Port Arthur jail were massacred. When did these events happen, and why? What was the aftermath of these events? For example, were any perpetrators brought to justice?

Note that in your research, you may have difficulty finding search references to the 'Port Arthur prison' on the Yorke Peninsula. The following quotation, from a booklet published in 2009, may be of interest to you in explaining the original purpose of this building: 'It has been said that in the early days of colonial settlement, the stone store-shed located (off park) inland from Port Arthur was used as a temporary lock-up for Aboriginal prisoners before they were sent on to Adelaide by boat.' (Department for Environment and

*Heritage Management Plan – Mainland Conservation Parks of Yorke Peninsula*, p.29.)

- After viewing the sequence in which Bobby Brown recalls the Emu Field nuclear testing experiments carried out in South Australia during the 1950s, carry out appropriate research then write your own account of these events, as though for a popular history magazine. Look at questions such as the reasons for the nuclear testing, when and where the testings were carried out, whether the Aboriginal people in the region were adequately informed, warned, managed and looked after, the short-term and long-term effects on the whole population of

radioactive fallout, the consequent sickness and death, enforced relocation to other areas, and whether there was any governmental compensation. You may include illustrations in your presentation. Use desktop publishing software to lay out your work in magazine page format.

- The existence of ancient sacred sites such as burial grounds, and the conflicting need to develop community services near, in or on their vicinity – such as hospitals and railways – is very emotive for everyone. What is a 'registered' sacred site? How and why can a site be registered? If a site is registered, what are the protocols, the laws and the regulations regarding how that site may be used, inhabited or developed?
- Continuing from the previous discussion on the existence and maintenance of sacred burial grounds, from the film discuss the sequences involving the construction and the opening of the Seaford rail extension. Could a





satisfactory solution for all parties have been found? Comment on the claim, in the film, that the railway line should have been shifted so that it would go around the burial ground rather than through it. For example, might this be a practical or impractical, a possible or impossible solution? Also consider budgeting and financing issues, where every metre of rail being laid down must be costed.

- Plan and write to letters to the editor of a newspaper, of 200-250 words each, about the burial site and the construction of the Seaford extension. The first should be written by a representative from the body that looks after sacred and cultural Aboriginal sites. The second should be written by a representative of the body in charge of the development of the Seaford project. Discuss in class how the two letters on the same issue, written by the two representatives, will be similar to, or different from, each other, in terms of content, argument, opinion and style.

## Film and Media studies

Carry out the following Film Studies activities that arise from a viewing of *King's Seal*.

- The filmmakers had a number of different titles for the film including : State of Denial, King's Letters and King's Orders, but settled on King's Seal. Discuss why the producers considered that *King's Seal* was a suitable title for the documentary. If you were asked to give the film an alternative title, what would you call it, and why?
- Before looking at the film's construction in some detail, turn the soundtrack voice-over narration down, then carefully view the opening, animated sequence of visual symbolism and metaphor, which is made up of shifting, morphing elements. Discuss the meaning of what you actually see on the screen during this sequence. What does this tell us about the possible content of the rest of the film?
- The filmmakers pitched the project to both the ABC and NITV at a time when NITV were about to go free-to-air and ABC had dumped their Message Stick pgm. The ABC showed some interest, but NITV were quick to commit and license the film. Comment on the audience you think *King's Seal* is aiming at. Take into account, in your response, that the program's first public television screening is on the NITV channel, part of the SBS network.
- Discuss the approach the filmmakers of *King's Seal* take towards their subject material. For example, is the film dispassionate, objective, or does it pursue and argue a particular agenda? Support your view with examples of scenes from the film.
- Following from the previous discussion, examine in further detail the film's approach to the presentation of information to support its basic contentions and arguments. At this point you may wish to review your initial discussion on the film's basic premise from the section, above, titled, '*Letters Patent of 1836*'. What is the evidence to support the arguments? Is it not only verifiable and accurate, but is it, in fact, evidence that follows from the film's basic premise? Does the film examine alternative





viewpoints and sources of information and argument? For example, does it introduce and assess conflicting legal opinions about the contemporary status of the Letters Patent as an historically binding and relevant document?

Does the film omit relevant historical detail? Who do the filmmakers choose to include, or not include, as interview material, and why?

- In assessing the documentary's approach, you should also discuss and look at examples of the use of emotive language, emotional appeal, verbal accusation, and the deployment, within the film's construction, of repetition and reinforcement as powerful influencing forces and techniques upon an audience. In this respect, examine the purpose and role played throughout *King's Seal* by the on-camera presence and voice-over narration of Stephen Goldsmith.
- Examine the way in which the

choice of inserted soundtrack music during particular sequences plays a part in affecting our response and reaction to on-screen events, scenes, dialogue and voice-over.

- Working in pairs plan and construct a scripted storyboard for a 30-second promotional video about *King's Seal*, designed for television screening. In groups you may then wish to produce, record and edit your promo. Consider your use of text captions, sound and film 'grabs' of visual content, music, sound effects and dialogue to tie it all together into a cohesive, effective advertising message.
- Plan and write a review in 250-300 words of *King's Seal* for a daily newspaper or TV program liftout supplement.

## Impressions and conclusions

Carry out the following activities.

- Discuss the general relevance and importance of *King's Seal* specifically to South Australia's and Australia's Aboriginal and Torres Strait Islander peoples, and in a more general sense to the wider Australian community.
- Write a commentary on what you think you have learnt and newly appreciated from a viewing of *King's Seal*. Has this documentary influenced, altered or intensified your views about issues such as understanding, recognising and redressing the past, and reconciliation between Aboriginal and non-Aboriginal Australia?



# References and further resources

## Books

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## Film

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#### King's Seal film website

<http://www.kingseal.com.au>



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